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Application No.: 09/755,408

Inventor(s): Robert I. Nurse

Filed: January 5, 2001

Docket No.: 7903M

Confirmation No.: 5236

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/755,408
Inventor(s) : Robert I. Nurse
Filed : January 5, 2001
Art Unit : 3727
Examiner : Stephen J. Castellano
Docket No. : 7903ML
Confirmation No. : 5236
Customer No. : 27752
Title : Selectively Reinforceable Container

AMENDED APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Amended Appeal Brief is filed pursuant to The Notification of Non-Compliant Appeal Brief dated May 7, 2007 and the appeal from the decision communicated in the Office Action mailed on August 30, 2006.

A timely Notice of Appeal was filed on November 27, 2006.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1, 3-5, 8-14, 16, 17 and 21-34 are pending in the present application. No additional claims fee is believed to be due.

Claims 2, 6, 7, 15 and 18-20 are canceled without prejudice.

Claims 1, 3-5, 8-14, 16, 17 and 28-33 have been withdrawn as a result of an earlier restriction requirement.

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Claims 21-27 and 34 have been finally rejected.

The rejection of claims 21-27 and 34 is appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendment was filed.

SUMMARY OF CLAIMED SUBJECT MATTER

As set forth in independent claim 21, the invention comprises a container having a plurality of upstandable sidewalls interconnected by a floor pan. The floor pan is domed. An upstanding reinforcing panel is releasably connected to one of the sidewalls. One of the sidewalls is reinforceable with the upstanding reinforceable panel. The reinforceable panel is releasable from the sidewall without the necessity of separating it from the container. See Specification, page 3, line 34 - page 4, line 20, and figures 4 and 5.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 21-26 and 34 stand rejected under 35 USC §103(a) as unpatentable over Simmons (US 5,622,276) in view of Syrek *US 5,392,945).
2. Claim 27 stands rejected under 35 USC §103(a) as being unpatentable over Simmons in view of Syrek and further in view of Spykerman (US 6,253,943).

ARGUMENTS

1. The rejection of claims 21-26 and 34 stand under 35 USC §103(a) as unpatentable over Simmons (US 5,622,276) in view of Syrek *US 5,392,945) is not properly supported and should be overturned.

Appellant submits that the cited combination fails to support a *prima facie* case of obviousness under 35 USC §103(a) as it does not teach or suggest each of the limitations

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of the invention as claimed and the motivation to combine the features of the *Syrek* and *Simmons* references is improper.

The Examiner points to the flexible liner 28 of *Simmons* as constituting the upstandable sidewalls and floor pan of the claimed container. References must be taken as a whole for all that they teach. *Simmons* teaches that the liner 28 is a supple water impermeable material supported by the bottom 14 of the container. Nothing in the *Simmons* reference teaches or suggests that the liner 28 is capable of holding a domed shape. Adding a dome to the outer shell of the *Simmons* container is not the same as adding a dome to the liner which is set forth as meeting the limitation of the claimed floor pan. The Examiner may not use the liner to represent the claimed floor pan and also use the bottom of the container to also represent the same floor pan. The cited combination does not teach or suggest a container having a domed floor pan.

There is no motivation to combine the references:

Simmons teaches away from such a combination. *Simmons* teaches that the purpose of the invention is to provide a cooler which may be folded to reduce the amount of space necessary for its storage. In folding the container of the reference, the hinge points of the sidewalls are necessarily above the level of the folded endwalls. Adding a dome to the container adds to the complexity of the referenced container and requires that the hinge points be raised further to accommodate the dome. This increases the space necessary for storing the folded container and serves to defeat one of the stated purposes of the referenced invention.

There is no motivation to make the combination in the references themselves. The domed floor of the *Syrek* reference is provided for the purposes of creating a gutter for the collection of excess fluid from a stack of wipes contained in a rigid container. The dome also serves to provide clearance in the bottom of the container for recesses which are present to provide an interlocking feature between multiple containers. The *Simmons* reference lacks any such interlocking features and the container of *Simmons* has no need for a gutter to collect excess fluid. The reasons provided in *Syrek* for providing a domed floor have no applicability to the *Simmons* container.

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The Examiner adds that the domed floor of *Syrek* may be added to the container of *Simmons* for the purpose of preventing bucking of the floor as is known in the prior art. The Examiner particularly points out that a domed floor may be found in the prior art. The genius of invention is often a combination of known elements which in hindsight seems preordained. *McGinley v. FSI*, 262 F.3d 1339, 1352, 60 U.S.P.Q.2d (BNA) 1001. The existence of claimed elements of a combination in the prior art does not, by itself, render the claimed combination obvious. Nothing in the reference teaches or suggests that the floor of the outer shell represents a weakness of the design which would benefit from the addition of a dome, whereas the additional height of the dome would adversely affect the performance of the container with regard to the required storage space.

The cited combination fails to teach or suggest each of the limitations of the invention as claimed and there is no proper motivation to combine the references. This rejection should be overturned.

2. The rejection Under 35 USC §103(a) Over *Simmons* in view of *Syrek* and further in view of *Spykerman* is not supported

Claim 27 stands rejected under 35 USC §103(a) as being unpatentable over *Simmons* in view of *Syrek* and further in view of *Spykerman* (US 6,253,943). This rejection is respectfully appealed because the combination of references fails to teach or suggest each of the elements of the invention as claimed and the combination of references is improper.

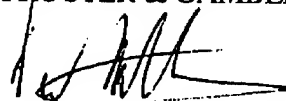
The *Simmons* / *Syrek* combination does not properly support a *prima facie* case of obviousness under 35 USC §103(a) as provided above. The addition of *Spykerman* does not cure this deficiency and the cited combination also fails to teach or suggest each of the limitations of the underlying independent claim and therefore cannot support a *prima facie* case of obviousness for a rejection under 35 USC §103(a) of claim 27. Without the underlying rejection of independent claim 21, this rejection cannot stand and should be overturned.

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SUMMARY

In view of all of the above, it is respectfully submitted that the rejections of claims 21-27 and 34 under 35 USC §103(a) are not properly supported and should be overturned.

Respectfully submitted,
THE PROCTER & GAMBLE COMPANY



Signature

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CLAIMS APPENDIX

21. (Rejected) A container having a plurality of upstandable sidewalls interconnected by a floor pan, wherein said floor pan is domed, at least one upstanding reinforcing panel releasably connected to at least one of said sidewalls, wherein at least one of said sidewalls is reinforceable with said at least one upstanding reinforceable panel, said reinforceable panel being releasable from said sidewall without separation from said container.
22. (Rejected) A container according to Claim 21, wherein said reinforceable panel has a proximal end and a distal end, said reinforceable panel being articulably joined to said container at said proximal end.
23. (Rejected) A container according to Claim 22, wherein said reinforceable panel is articulably joined to said container at a hinge juxtaposed with said floor pan.
24. (Rejected) A container according to Claim 22, wherein said reinforceable panel is attachable to said container at said distal end of said reinforceable panel.
25. (Rejected) A container according to Claim 24, wherein said distal end of said reinforceable panel is attachable with a tab/slot arrangement wherein one of said reinforceable panel and said sidewalls have protruding tabs, the other having complementary slots attachable to said tabs.
26. (Rejected) A container according to Claim 25, wherein said reinforceable panel comprises a panel, said panel being substantially coextensive of and attachable to a sidewall of said container.
27. (Rejected) A container according to Claim 26, wherein said reinforceable panel further comprises notches for gripping said reinforceable panel by a user.

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34. (Rejected) A container according to Claim 24, wherein said floor pan has an inner surface and an outer surface, said reinforceable panel being removably attachable to said outer surface of said floor pan.

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EVIDENCE APPENDIX

(None)

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RELATED PROCEEDINGS APPENDIX

(None)